

OFWAT PUBLISHES PR24 DRAFT DETERMINATIONS

1. Introduction

- 1.1 On 11 July Ofwat published its Draft Determinations under Price Review 2024 (PR24), following a delay to the original timetable as a result of the UK General Election on 4 July 2024.
- 1.2 Draft Determinations are the first public indicator of Ofwat's view on the proposed business plans submitted by companies holding appointments as water and/or sewerage undertakers (referred to below as "water companies"), and of its likely approach to the controls that will govern prices in the water sector between 2025 and 2030.

2. Ofwat's provisional conclusions

- 2.1 In the business plans submitted in October 2023, water companies collectively requested over £100bn to spend between 2025 and 2030, a record amount.
- 2.2 Ofwat's provisional determinations include:
 - (a) A total permitted spending package of £88bn, £16bn lower than companies' business plans. Ofwat has indicated that this will still entail a tripling of investment in new infrastructure and resources compared with the 2020-2025 period.
 - (b) A material increase in customer bills, by an average of c.£19 per year (£94 in total), before inflation, over 2025-2030. While most companies will receive less than they had proposed in their business plan, there is a significant variation between companies in the scale of the adjustments.
 - (c) A new approach to ring-fencing of investment funding, with a claw back mechanism to ensure that money not spent on investment is returned to customers.

- (d) An increase in the WACC for companies at 3.72%, against the background of business plans identifying a new equity funding requirement for companies of around £7bn by 2030.
- (e) 24 common performance commitments, including 8 new environmental targets, with almost all carrying rewards for outperformance and penalties for underperformance.

- 2.3 Notably, Ofwat's provisional determinations place Thames Water in a new Turnaround Oversight Regime involving heightened scrutiny, including potentially installing an Independent Monitor to report on progress against the company's transformation plan.

3. Next steps

- 3.1 Ofwat will consult on the Draft Determinations until 28 August 2024, including by holding Q&A sessions with customers and stakeholders on 23 and 24 July 2024. This consultation period has been shortened due to the delay in publication of Draft Determinations.
- 3.2 Ofwat currently plans to publish its Final Determinations on 19 December 2024, though it is seeking the ability to move this publication back to January 2025 if necessary (see section 7 below).
- 3.3 Price limits as specified in the Final Determinations will come into effect on 1 April 2025.

4. PR24 appeals

- 4.1 Companies that are unhappy with the approach that Ofwat is proposing to take will, in the first instance, seek to use the current consultation period to persuade Ofwat to modify its position.

4.2 If this does not succeed then, on publication of Ofwat’s Final Determinations, water companies have the option to require Ofwat to refer the Final Determination to the Competition and Markets Authority (CMA). For decisions on price controls, such requests have to be made within two months of publication of the Final Determinations.

4.3 Upon receipt of a referral, the CMA would undertake a redetermination of the decision as a whole, by reference to the principles that applied to the original decision (so, e.g., taking into account the statutory duties on Ofwat under the Water Industry Act 1991).

4.4 The CMA review process for price controls in the water sector is therefore fundamentally different to the more targeted appeal system that applied to the RII0-2 price control decisions in the energy sector, and also to the appeals regime that applies to other proposed changes to water company licences (including the proposed introduction of additional timing flexibility as discussed below).

4.5 The CMA’s decision will be made by a specially appointed reference group that will include utilities expert(s).

5. Key considerations for water companies that may want to seek redetermination

5.1 Although in principle the CMA will conduct a redetermination of Ofwat’s decision as a whole, it only has a limited window of time to conduct the process (usually 6 months, subject to the possibility of an extension for up to a further 6 months if there are “special circumstances”). It is also possible that, as at PR19, it will need to consider multiple appeals by different companies simultaneously.

5.2 It is therefore inevitable that the CMA will place more emphasis on those areas that are actively in dispute between the parties. This in turn means that parties seeking a redetermination need to focus on their key points. They will also need to have their full case available at the outset of the CMA process as there may be limited opportunities to expand or supplement the original case.

5.3 The implication of all of this is that parties wishing to preserve the option of an appeal will need to be well advanced in their preparation prior to the Final Determinations being issued, and well ahead of a final decision being taken on whether a redetermination is required until the new year

6. Consultation on amendments to water company licences

6.1 At the same time as the Draft Determinations, Ofwat has also published a new consultation proposing amendments to Condition B of water companies’ licences, that would enable it to delay publication of its Final Determinations for the 2025-30 period until the end of January 2025.

6.2 The consultation states that publication by 19 December 2024 remains Ofwat’s intention, but that it is seeking this amendment to provide flexibility “in the event of unforeseen circumstances”, given that the timing of the general election has already led to the timetable for the final stages of the process being compressed. However, under the proposed drafting of the revised provision there would be no requirement on Ofwat to identify specific unforeseen circumstances before deciding to delay publication.

6.3 In the event that these provisions are implemented, and publication of the Final Determination is delayed into January 2025, the 1 April 2025 date at which new prices become effective would remain unchanged. Ofwat recognises that this scenario could have implications for the ability of companies to meet the normal deadlines for setting and publishing charges, and that there may be a need for mitigating measures although no decision is taken on these at this stage.

6.4 Water companies have until 22 August 2024 to make any representations, or objections to, these proposed modifications. For the water companies based in Wales consent will be required to implement these changes. For those in England and Wales Ofwat will be able to implement the proposed changes subject to the possibility of appeals to the CMA.